96th Congress, 1st Session - - - - - - - - - House Document No. 96-33

TRADE AGREEMENTS REACHED IN THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

NOTICE OF SEVERAL TRADE AGREEMENTS REACHED IN THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS, PURSUANT TO SECTION 102(e)(1) OF THE TRADE ACT OF 1974

JANUARY 15, 1979.—Referred to the Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
39-011 WASHINGTON : 1979

THE WHITE HOUSE,
Washington, January 4, 1979.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: We have an important opportunity this year to build a new and better approach to international trade. The first important step depends on acceptance and implementation by the Congress of the agreements reached in the Tokyo Round of multilateral trade negotiations. We are now within sight of a successful conclusion to these negotiations. I am confident that the results will embody the U.S. objectives outlined by the Congress in the Trade Act of 1974 and developed in close consultation with members of the Congress, their staffs, and our private-sector advisors. Neither Bob Strauss, my Special Trade Representative, nor I will accept anything less on behalf of the United States.

The progress of the negotiations is such that I can notify the Congress at this time of our intention to enter into several international agreements dealing mainly with non-tariff trade matters. These agreements, to which Congress gave a high priority in its mandate for the negotiations, are intended primarily to ensure that the international trading system is both fair and open. The agreements are listed and identified below and are described more fully in an attachment to this letter.

An agreement on subsidies and countervailing duties will limit trade-distorting subsidy practices and will enunciate more clearly the right of the United States and others to counteract such practices. The agreement may provide for a number of conforming changes in the international Anti-dumping Code

An agreement on safeguards in response to a specific Congressional directive, will ensure that countries observe international trading rules when temporarily limiting imports that are injuring domestic industries.

An agreement on technical barriers to trade or standards will require countries to use fair and open procedures in the adoption of product standards and related practices that affect international trade.

An agreement on government procurement will increase opportunities for American and other exporters to bid for sales to foreign governments.

An agreement on licensing will reduce the extent to which unnecessary or unduly complicated import licensing requirements impede trade.

An agreement on customs valuation will encourage more uniform methods of appraising imports for the purpose of applying import duties.

An agreement on commercial counterfeiting will promote cooperation and uniform approaches for this growing trade problem.

An agreement on aircraft will provide a basis for fairer trade in this important U.S. export sector.

Agreements to improve the international trading framework will tighten the handling of international trade disputes, respond to needs of developing countries in a fair and balanced manner, modernize the international rules applicable to trade measures taken in response to balance-of-payments emergencies, and provide a basis for examining the existing international rules on export and import restraints, while currently strengthening those rules through improvements in the dispute-settlement procedures.

Several other agreements on tariff and non-tariff matters have been negotiated in response to specific requests that were made by the United States or other countries. These agreements are described in the attachments.

In addition, members of the Administration will be consulting with the Congress about the implementation of several agreements on agricultural trade that we intend to enter into at about the time the Tokyo Round is concluded. These agreements will provide for a fairer international sharing of the burdens in international wheat trade, and will encourage consultations and cooperation on international trade in coarse grains, meat, and certain dairy products. The agricultural agreements are also expected to improve the application of accepted international trading rules to agricultural trade.

In accordance with procedures specified in the Trade Act, the United States will not enter into the agreements outlined above for the next 90 calendar days. After the agreements have been signed, they will be submitted for Congressional approval, together with whatever legislation and administrative actions may be needed to implement the agreements in the United States. The agreements will not take effect with respect to the United States, and will have no domestic legal force, until the Congress has specifically approved them and enacted any appropriate implementing legislation.

During Congressional consideration of these agreements, we will also supply information on the related negotiations to reduce, harmonize, or eliminate tariff barriers, and on the recent establishment of an International Steel Agreement in the Organization for Economic Cooperation and Development.

The success of the Tokyo Round and its implementation will be the product of a good working relationship among the Congress, the Administration, and the American public. Through these agreements and their domestic implementation, we can construct trade policies and institutions that advance our national interest and enhance the prosperity of our people. I look forward to our working together to complete this effort.

Sincerely,

JIMMY CARTER.

NONTARIFF MEASURES NOT BEING DEALT WITH MULTILATERALLY

The following U.S. measures are presently being considered for modification in the MTN:

1. Wine-Gallon Method of Tax and Duty Assessment

A. ISSUE

U.S. excise taxes and import duties on distilled spirits are assessed on the basis of proof-gallon or of wine-gallon. The wine-gallon method assesses excise taxes and import duties on bottled imported distilled spirits of below 100 proof at the 100 proof rate. This results in a higher tax burden on bottled imported spirits than on spirits imported in bulk and on domestically-produced spirits. These spirits are assessed taxes before bottling in the United States under the proof-gallon method (i.e., taxes and duties are assessed in direct proportion to the alcoholic strength of the spirits). For many years the wine-gallon assessment method has been a major irritant in our economic relations with our major trading partners, particularly with the United Kingdom and other countries of the European Communities and Canada.

The EC, Canada, Jamaica, Trinidad and Tobago, Poland, and Bangladesh have requested the elimination of the U.S. wine-gallon assessment method in the MTN.

B. IMPLEMENTATION OVERVIEW

Changes would be required in Internal Revenue Code of 1954, as amended (26 USC 5001) and in Tariff Act of 1930 (19 USC 1001).

2. Duty on Aircraft Equipment and Repairs

A. ISSUE

The United States assesses a 50 percent *ad valorem* duty on the cost of aircraft equipment purchased abroad and on repairs made aboard on aircraft registered in the United States. The duty is not contained in the Tariff Schedules of the United States.

The United States is considering the modification of this duty in the context of an MTN agreement on international principles for free and fair trade in aerospace products. Discussions of an aerospace agreement were only recently commenced. Whether and the extent to which the United States would modify its duty depends on the negotiated provisions of such an agreement and its binding nature.

B. IMPLEMENTATION OVERVIEW

Changes might be required in Tariff Act of 1930, as amended (19 USC 1644), in the Federal Aviation Act (49 USC 1509), and in the Customs Regulation, 19 CFR 6.7D.

3. REMOVAL OF DE FACTO U.S. PROHIBITION ON IMPORTS OF FOREIGN-BUILT INFLATABLE RUBBER RAFTS AND FOREIGN-HOVERCRAFT

A. ISSUE

Foreign-built vessels are prohibited from engaging in U.S. coastwise trade. Foreign-built inflatable rubber rafts and hovercraft for passenger transport use are considered vessels and cannot be imported into the United States.

The European Communities and Canada have requested the removal of this import prohibition in the MTN.

B. IMPLEMENTATION OVERVIEW

Changes may be required in the Tariff Act of 1930, as amended (19 USC 1401 and 1202), and in the Jones Act and other U.S. Navigation Laws (46 USC 11, 251, 289, and 883), or in regulations under the Jones Act.

4. STANDARDS OF INDENTITY FOR PINEAPPLE

A. ISSUE

Imported Malaysian canned pineapple does not meet U.S. Food and Drug Administration (FDA) standards of identity. Malaysian sliced pineapple is excessively trimmed; cubed pineapple chunks are too large. Consequently, FDA requires that Malaysian canned pineapple sold in the United States be labeled as substandard in quality.

The Administration has offered to assist Malaysian pineapple interests in preparing a petition to amend the relevant FDA standards.

B. IMPLEMENTATION OVERVIEW

FDA Regulation 21 CFR 145.180

5. U.S. WATCH MARKING REQUIREMENTS

A. ISSUE

Under the Tariff Act of 1930, imported watches must be marked with both arabic numerals and words so as to indicate the number of jewels they contain. Watch dials must be marked in a certain manner to show the country of origin.

Switzerland has requested the United States to liberalize these watch marking requirements.

B. IMPLEMENTATION OVERVIEW

Changes would be required in the Tariff Act of 1930, as amended, (19 USC 1202), headnotes 4(a)(iii), 4(a)(iv) and 4(e) of Subpart E, Part 2, Schedule 7 of the Tariff Schedules of the United States.

6. Recurring Duties on Railway Rolling Stock and Per Diem Charges for Railcars

A. ISSUE

The Tariff Schedules provide (in the absence of a specific provision to the contrary) that there can be no exemption from customs duties for articles that have been previously imported into the United States and cleared through U.S. Customs. Railway Rolling Stock, previously imported, is subject to recurring U.S. duties.

ICC regulations require that "per diem" charges be paid by common carrier railcar users to owning railroads for railcars used in United States commerce. "Per diem" charges paid by U.S. users of railcars owned by Canadian railroads must be credited to a U.S. designee and may only be used to purchase U.S.-built railcars.

Canada has requested: (1) that the U.S. Tariff Schedules be amended to exempt railway rolling stock from recurring duties, and (2) that the U.S. eliminate the requirement that "per diem" funds may only be used to purchase U.S.-built railcars.

B. A change would be required in the Tariff Act of 1930, as amended, (19 USC 1202) to establish a new tariff item under Schedule 8 of the Tariff Schedules of the United States. A change would be required in ICC regulations 353 ICC 612 of March 21, 1977.

7. Duty-Free Treatment of Agricultural and Horticultural Implements, Parts Thereof, and Accessories

Item 666.00 of the Tariff Schedules provides duty-free treatment for agricultural and horticultural implements not specially provided for and parts of any of the foregoing. Specific articles are, however, classified under other provisions of the Tariff Schedules and are subject to duty when more specifically described in those provisions.

Canada has requested the United States to amend the Tariff Schedules to permit duty-free entry for all agricultural and horticultural implements, and any parts of the foregoing, and accessories.

B. IMPLEMENTATION OVERVIEW

Changes might be required in the Tariff Act of 1930, as amended (19 USC 1202), headnote 1, Subpart C, Part 4, Schedule 6 and in General Headnote 10(ij) of the Tariff Schedules of the United States.

The United States has also received the following NTM requests, which have not so far been the subject of active negotiations, but which may be pursued further by other countries in the negotiations:

1. Eliminate "Buy America" preferences that are tied to loans by the Rural Electrification Administration to utilities.
2. Eliminate practice whereby U.S. ships that benefit from "construction or operating differential" subsidies are required to use U.S. materials "so far as practicable."
3. Elimination of tax deferrals on export income of Domestic International Sales Corporation.
4. Elimination of duplicative antidumping and countervailing duty investigations conducted under Section 337 of the Tariff Act of 1930, as amended.
5. Establish a reasonable time period within which the U.S. Customs Service must make official rulings on valuation and classification matters.

6. Require that U.S. courts establish customs value where customs appraisement is shown to be erroneous.
7. Acceptance of commercial invoice rather than Special Customs Invoice 5515.
8. Elimination of Special Customs Invoice 5519 for textile imports.
9. Reduce excise tax on sparkling cider.
10. Eliminate customs formalities on cashmere and angora goat hair.
11. Increase number of designated ports of entry for furskins.
12. Adopt Customs Cooperation Council nomenclature as basis for U.S. tariff nomenclature system.
13. Simplify U.S. tariff nomenclature.
14. Establish precise criteria for determination of an article's "chief use" under TSUSA General Headnote 10(e).
15. Amend TSUSA so that articles previously imported and cleared through U.S. customs can be exported and reimported without payment of duty.
16. Interpret definition of "unwrought" in TSUSA headnote 3(a) of Schedule 6, part 2 to allow further processing to facilitate handling.
17. Amend TSUS Schedule 6, part 2, subpart B to permit "ductile iron" to be classified as "cast iron" rather than steel.
18. Change TSUS definition of "sponge iron" to be consistent with present technology and U.S. Customs Court decisions.
19. Publish guidelines on meaning of "ornamented "textiles so that exporter can determine in advance the proper classification of his goods.
20. Reclassify "lace or net underwear" under TSUS.
21. Provide separate TSUS classifications for fresh and for salt water fish sticks.
22. Eliminate special U.S. customs form for watches.
23. Eliminate unspecified U.S. customs administrative entry procedures.
24. Reclassify "cotton mesh horse blankets" under TSUS.
25. Reclassify "Unimog tractors" under TSUS.
26. Reclassify "synthetic single crystal quartz" under TSUS.
27. Reclassify "Tagger-tails" under TSUS.
28. Reclassify "bobbins" under TSUS.
29. Reclassify "jeans" under TSUS.
30. Reclassify "industrial rubber sheeting" under TSUS.
31. Reclassify "writing ink containers" under TSUS.
32. Amend U.S. regulations to permit cancellation of bonds by payment of proper U.S. customs duty.
33. Accept Swiss pharmaceutical certification without reinspection by U.S. Public Health Service.
34. Change U.S. federal lumber standards.
35. Limit U.S. requirement for marking of country of origin to items where this information is essential to the ultimate purchaser.
36. Eliminate labeling requirements under the Fair Packaging and Labeling Act of 1966.
37. Require the Food and Drug Administration to uniformly interpret and apply its regulations.
38. Relax U.S. sanitary regulations applied to fish, frogs, clams, crabs, oysters, and crustaceans and molluscs.
39. Liberalize FDA sanitary regulations for pepper.

40. Relax unspecified packaging, labeling, and marking requirements for gloves, knives, scissors, and spoons.
41. Remove or relax FDA regulations for registering, licensing, and testing of various imported drugs.
42. Do not apply nontariff trade barriers through regulations of the Food and Drug Administration.
43. Simplify U.S. standards on permissible lead content in various products.
44. Removal of unspecified standards and sanitary requirements on various products.
45. Eliminate embargo on importation of foreign-built ships for use in U.S. coastwide trade.
46. Permit U.S. registry of foreign-built fishing vessels for use in U.S. fisheries trade.
47. Removal of prohibition on purchase of foreign-built containers for use in U.S. coastwide trade.
48. Eliminate embargo on importation of firearms except for sporting purposes.
49. Eliminate embargo on enrichment of imported natural uranium for use in the United States.
50. Remove quotas on specialty steel.
51. Eliminate *de facto* prohibition on imports of English language books authored by a U.S. citizen or resident.
52. Eliminate prohibitions applying to imports of dangerous drugs.
53. Permit importation and sale of authentic native handicrafts and clothing made from marine mammals and certified to have been produced by native peoples of Canada.
54. Permit imports of whalebone products accompanied by certificate by an official Canadian Government archeological expert indicating that fossilized whalebone was used in making imported products.
55. Provide duty-free treatment to imported medical and scientific instruments and apparatus purchased by non-profit institutions.
56. Remove embargo on imports of chocolates containing liqueurs.
57. Cancellation of various bilateral textile trade agreements.
58. Eliminate licensing fees on imported petroleum products.
59. Acceptance by U.S. Treasury Department of Canadian Government certificate that alcohol denaturing has taken place.
60. Elimination of export licensing requirements on all products imposed for national security and short supply purposes.
61. Removal of export restraints under GATT Multi-Fiber Arrangement.
62. Terminate arrangements with other countries whereby those countries must restrain their export shipments of footwear and mushrooms to the United States.
63. Eliminate Los Angeles County personal property tax on cargo shipping containers.
64. Eliminate unspecified U.S. labor union activities that restrict trade.
65. Do not establish a Consumer Protection Agency.
66. Eliminate U.S. GATT waiver for all products subject to Section 22 of the Agricultural Marketing Act.
67. Eliminate U.S. federal excise taxes on tobacco products.
68. Eliminate state sales taxes on numerous products.
69. Remove unspecified restrictions on various agricultural products.

70. Reclassify "buffalo meat" under the TSUS.
71. Accord "generally regarded as safe" status to rapeseed oil.

Government Procurement

I. EXECUTIVE SUMMARY

The Government Procurement Code is intended to discourage discrimination against foreign suppliers when governments purchase articles for their own use. The objective is to secure greater opportunities for our products to compete for sales to foreign governments.

In some countries discrimination against foreign suppliers is achieved by clearly stated percentage preferences for domestic suppliers. In its most comprehensive form, the Code will respond to this by a provision for the elimination of such preferences. Other countries achieve their discrimination by the highly invisible use of administrative practices and procedures used in procurement. This is the much more difficult task addressed by the Code. For that reason the largest part of the Code is devoted to establishing appropriate rules, where such rules now don't exist, and the means for ensuring that they would be applied openly so that all will be aware that the procurement process is carried out in a fair and equitable manner.

The Code rules are designed to discourage discrimination at all stages of the procurement process. Thus we find that specific rules are prescribed on the drafting of the specifications for goods to be purchased, on the advertising of prospective purchases, on the time allocated for the submission of the bids, on the qualification of suppliers, on the opening and evaluation of bids, on the award of contracts, and on hearing and reviewing protests.

The code also would contain dispute settlement procedures by which the United States could complain and secure reviews and international adjudication of foreign violations of the code that adversely affected U.S. competitive opportunities.

The question of code coverage is addressed in various sections of the draft code. The code applies to government purchases of goods but not services except those which are incidental to the purchase of goods. The code will not apply to procurements of goods involving national security considerations, nor will it apply to purchases under agricultural support programs. Purchasing entities to be embraced under the code, the choice of a level of value of contracts to which the code would apply, and conditions for departures from the code obligations are all relevant to the coverage question and must be finally resolved before the code negotiations are completed. Until these are finally resolved, one cannot predict with certainty the degree of changes which would be warranted in the existing legislation delineated in Annex 1 of this paper.

II. STATUS OF NEGOTIATIONS

The keystone of the Code is the elimination of discrimination against foreign suppliers when governments purchase articles for their own use. The most obvious form of such discrimination is the clearly stated preferences maintained by some countries for domestic suppliers. The code will respond to this by a provision requiring national treatment in procurements.

The much more difficult task addressed by the code is the elimination of discrimination effected by the absence of procurement rules or the invisible use of existing practices and procedures to bring about the discrimination. As might be expected, the largest part of the code is devoted to establishing appropriate rules and the means for insuring that they would be applied openly so that all will be entirely aware that the procurement process is carried out in a fair and equitable manner.

The first obligation on code signatories is that they publish their procurement laws and regulations and to have those laws and regulations reflect the rules embraced in the code.

Purchasing entities are obligated to publish all bid opportunities. They have discretion in their choice of purchasing procedures, provided they observe the requirement of providing the maximum degree of competition possible. Under the "open" procedure, all interested suppliers may bid, while the "selective" procedure allows the government to invite bids from selected suppliers, due account being taken of all those on such bidders lists which they maintain or from others who are otherwise qualified to participate in such a procurement. Use of "single tender" procedures, or going to a single supplier, is to be permitted only under certain strictly defined conditions such as when a natural disaster demands immediate procurement from the first available source and use of a competitive procedure would thwart the relief from the disaster.

Code rules are designed to discourage discrimination against foreign supplies and suppliers at all stages of the procurement process. Specific rules are prescribed on the drafting of specifications for goods to be purchased, advertising of prospective purchases (including the details for inclusion in the notice and in the tender document), time allotted for the preparation and submission of bids, aware of contracts, and hearing and reviewing of protests. Rules are provided also to cover various contingencies, such as when bid invitations are amended or reissued, bids are submitted by telephone, telex or telegram to meet bid deadlines, errors have been made in bids, or all bids received are considered unacceptable.

While the code would not prohibit the granting of an offset or the requirement that technology be licensed as a condition of award, signatories recognize that offsets and requirements for licensing of technology should be limited and used in a nondiscriminatory way.

The thrust of the code is that it will be largely self-policing. Rules and procedures are structured so as to provide the fullest opportunities for any problems which may arise during any phase of the procurement process to be resolved between the potential supplier and the procuring agency. For the expected few cases of problems not so resolved, the code provides for bilateral consultations between the procuring government and the government of the aggrieved supplier. Failing such bilateral resolution of a problem, the code provides for a multilateral dispute settlement mechanism. In essence that mechanism provides for a "good offices" effort at conciliation by a Committee of Signatories. Failing a successful conclusion by that method the complaint may be addressed to the Committee which would hear the complaint within 30 days. The Committee may, at the request of any party to the dispute, convene an impartial panel to hear the dispute, making find-

ings of fact and report those, with its recommendations to the Committee of Signatories. If the party to which the Committee's recommendations are addressed is unable to implement them, it must provide its reasons promptly to the Committee in writing.

The question of code coverage, viewed in the broad sense, is addressed in various sections of the code. Obligations under the code will not apply to those procurements for which there are national security considerations. The code rules will also not apply to procurements under a tied-aid agreement. The code would not initially apply to government purchasing of services except those services which are incidental to the purchase of goods.

Also relevant to the code coverage question are the government purchasing entities to be embraced under the code, the value level of contracts to be subject to the code, and conditions for temporary departures from the code obligations. All of these coverage issues are still to be resolved. The hope had been that all entities under the direct of substantial control of governments would be subject to the code. It now seems quite certain that some lesser universe of entities will be subject to the code, at least initially. With regard to the value level of contracts to be covered by the code, the likelihood is that will be fixed at something in the area of $150,000.

The Code would recognize that developing countries should be considered specially with regard to the part of their procurement universe which would be subject to the Code. They would also be provided with technical assistance and enjoy the ability to petition the signatory nations for time-limited derogations from the national treatment obligation of the Code when conditions warrant.

III. OUTSTANDING ISSUES

A. *Ex Poste Publicity (Publication of Awards).*—The U.S. has maintained that one of the most essential elements for insuring transparency in the procurement process is the guarantee that the name of the winning bidder and the amount of the award will be published for each procurement contract. The EC and others have argued that such publication is unnecessary and will also lead to collusive bidding in future procurements of the same item. Resolution of this problem is likely to be found in a commitment that the procuring agency, on request of a losing bidder, will provide to him the name of the winning bidder, the reasons why his bid was not accepted, with the possibility that in all but a few instances the amount of the winning bid will be available to him through his own government.

B. *Threshold.*—Clearly no international code should address very low levels of contracts. There is just not enough international interest to warrant governments to undertake the chores attendant on such contracts being made subject to the code. It is equally clear the most U.S. procurement contracts are far larger in size than those in most other procurement markets. The U.S. has argued for a threshold of well under $150,000 while most others have argued for one much in excess of that amount. It is anticipated that final agreement can be reached on something approaching that amount.

C. *Entity Coverage.*—The U.S. total procurement of civilian goods potentially subject to the code far exceeds that of any nation participating in the negotiation. Notwithstanding, we have argued that

reciprocity would exist if all nations agreed to subject to the code their entire universe of government agencies directly or substantially controlled by them. It now seems clear that many industrial nations are not prepared politically to agree to that level of entity coverage. The entity offer lists put forward by a number of countries are still being analyzed and adjusted. The final offers will likely range from those countries offering the totality of their procurement universe to some who will offer considerably less. The distinct possibility exists that a final solution on coverage may require a two-tier approach with one group of countries undertaking a higher level of obligation than the other.

D. *Origin Rule.*—As pointed out earlier, the code advantages will accrue only to supplies originating in signatory countries. Consequently there was an early examination as to whether a new universal rule on origin would have to be formulated or would the existing MFN customs rules for determining country of origin be sufficient for this purpose. Most of the negotiating countries favor the latter approach.

Subsidies and Countervailing Duties

I. EXECUTIVE SUMMARY

The United States has sought greater discipline over the use of foreign subsidies that confer unfair competitive advantages upon the products of the subsidizing country. An MTN agreement on subsidies and countervailing duties affords an opportunity to achieve basic U.S. objectives in a way that will permit the United States to limit foreign subsidy practices without sacrificing the ability to make effective use of the countervailing duty law. The domestic implementation of such an agreement may also create an opportunity to streamline U.S. domestic procedures for countervailing duty investigations by, for example, providing for expedited "provisional" relief speeding up normal countervailing duty investigations, or improving the operation of section 301 of the Trade Act of 1974 (pertaining to "unfair foreign trade practices") as it relates to foreign subsidies.

A draft Arrangement on Subsidies and Countervailing Duties has been developed in Geneva by major MTN participants which provides the substantive basis for a final operational document.

II. STATUS OF NEGOTIATIONS

With regard to discipline over foreign subsidies, the United States objectives have been (1) a tighter prohibition on the use of export subsidies on industrial products (through, *inter alia*, an updated illustrative list of prohibited export subsidies, a definition of what constitutes an "export subsidy", and elimination of the current requirement that an illegal export subsidy must result in "dual pricing" i.e., sales price abroad lower than the sales price in the home market); (2) a "clarification" of the rule on export subsidies for agricultural products that would, *inter alia*, prohibit use of such subsidies in a manner which displaces the trade of other countries in third country markets or which results in material price undercutting in such markets; and (3) guidelines with regard to the use of domestic subsidies. These have been substantially met in the attached draft.

In order to enforce obligations with regard to the use of subsidies,

the draft Arrangement provides for improved notification, consultation and dispute settlement procedures and, where breach of obligation concerning the use of subsidies is found to exist, countermeasures are contemplated. In this connection, the dispute settlement process has been designed to produce results within 150 days.

In addition to the availability of such countermeasures, countries could also take traditional countervailing duty action to offset subsidies upon a showing of injury to a domestic industry. The code would set out criteria for injury determinations. Where a subsidy is granted in violation of agreed rules, a showing of threat of injury would likely flow from the nature of the subsidy. The draft Arrangement would also provide for more effective notification and consultation requirements prior to taking action.

III. KEY CODE PROVISIONS

1. Flat prohibition of export subsidies on non-primary products as well as primary mineral products.

2. A definition of export subsidy which abolishes the existing dual pricing requirement and provides an updated illustrative list.

3. With respect to domestic subsidies, recognition that while they are often used to promote important objectives of national policy, they can also have harmful trade effects; relief (including countermeasures) available where such subsidies (a) injure domestic producers; (b) nullify or impair benefits of GATT concessions (including tariff bindings); or (c) cause serious prejudice to the interests of other signatories.

4. Recognition that where domestic subsidies are granted on non-commercial terms, trade distortions are especially likely to arise; commitment by signatories to "take into account" conditions of world trade and production (e.g., prices, capacity, etc.) in fashioning their subsidy practices.

5. Improved discipline on use of export subsidies for agriculture. Prohibition on such subsidies when used in a manner which (a) displaces the exports of others or (b) involves material price undercutting in a particular market.

6. Provision for special and differential treatment under which LDCs could not use export subsidies where such subsidies adversely affect the trade or production interests of other countries; provision for negotiated phase-outs of export subsidies by LDCs.

7. Tight dispute settlement process (panel findings regarding rights and obligations within 120 days of complaint) to enforce discipline of code. This should provide growing body of case law.

8. Greater transparency in subsidy practices (including provision for notification to the GATT of practices of other countries).

9. For countervailing duty actions, an injury and causation test designed to afford relief where subsidized imports (whether an export or domestic subsidy is involved) impact on U.S. producers either through volume or through effect on prices.

10. Greater transparency in the administration of countervailing duty laws/regulations.

IV. ANTIDUMPING CODE

Other countries have suggested that the injury/causality/regional market criteria and the transparency provisions (i.e., public notice requirements etc.) negotiated in the subsidy/CVD context be introduced into the Antidumping Code. While no agreement on this point has yet been reached internationally, nor any final U.S. commitment given, the U.S. has indicated that the proposal might prove desirable. There is no conceptual problem in modifying the Antidumping Code to conform with the provisions of the subsidy/countervailing duty code, since both interpret and apply GATT Article VI. The provisions of the subsidy/CVD draft which would be transposed into the Antidumping Code are noted in the draft.

SAFEGUARDS

I. EXECUTIVE SUMMARY

All countries occasionally find it necessary to restrict imports of particular products in order to afford domestic producers temporary relief from injurious import competition. GATT Article XIX provides an international procedure for handling such cases.

Article XIX has not worked well, however, and only a very few countries other than the United States have made any appreciable use of its provisions. Other countries have avoided injurious import competition through measures applied under other GATT provisions or have taken action outside GATT entirely. The United States Congress therefore instructed the President (section 121(a)(2) of the Trade Act of 1974) to seek a revision of Article XIX to form a truly international safeguard procedure which takes into account all forms of import restraints countries use in response to injurious competition or threat of such competition.

The draft code on safeguards is intended to accomplish this purpose. It provides for as broad a coverage of measures as possible—including export restraints which are commonly used for safeguard purposes. It contains improved criteria to be met in taking safeguard action and a set of conditions to which individual safeguard measures must conform. If countries adhere to these criteria and conditions, the need for retaliation against safeguard actions should be reduced.

The code also contains provisions to encourage more openness and due process in other countries' domestic safeguard procedures. Improved international discipline in the use of safeguard measures would be provided by procedural reform and the establishment of a committee of signatories which would be given surveillance and dispute settlement functions.

Whereas present GATT provisions permit safeguard actions only on a non-discriminatory basis, the new code would permit some scope for selective action against imports from particular countries when these are the cause of serious injury. Selective action would, however, be subject to certain conditions.

Implementation of the safeguard code will provide an opportunity to review the operation of the U.S. escape-clause law, and possibly to authorize expedited escape-clause investigations in certain

circumstances and to make other legislative improvements. Neither the safeguards negotiations nor the domestic implementation is expected to affect section 22 of the Agriculture Act, or the U.S. meat import program.

II. STATUS OF NEGOTIATIONS

The safeguard code would supplement and improve upon the provisions and procedures of GATT Article XIX. Article XIX permits a country to temporarily restrict imports of a product if, as a result of unforeseen developments and the effects of GATT obligations including tariff concessions, the product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of a like or directly competitive product.

A country taking action under Article XIX is required to consult with countries affected by the action (in advance unless emergency action is necessary) in order to reach agreement. The country taking action frequently obtains agreement by giving compensation to affected countries. For example, if the import duty on one product is increased, the duty on another product might be lowered to provide equivalent benefits. If agreement is not reached, the affected countries may retaliate by suspending tariff concessions or other GATT obligations to the trade of the country taking safeguard action.

A safeguard action under Article XIX can, upon request, be examined by the full GATT membership to see whether it conforms to the criteria of Article XIX. However, this is very rarely done.

The safeguard code would expand and improve these provisions and procedures. The following is a brief description of the provisions of the draft code.

General Provision.—This provision establishes the obligation not to take safeguard action except through invocation of GATT Article XIX and in accordance with Code provisions. Import restrictions can be applied for other purposes under other GATT provisions (for example, for balance of payments reasons) or under multilateral agreements and arrangements negotiated under GATT auspices (for example, the Multifiber Agreement governing trade in textiles). The code would not apply to these measures.

Chapter 1—Determination of Serious Injury.—This Chapter sets forth the criteria that must be met in taking safeguard action. One suggestion for such criteria is a list of indicative factors which governments should consider in evaluating the effects of imports on domestic producers. These factors are: output, turnover, inventories, market share, profits, prices, export, performance, employment and wages, imports, capacity utilization, and investment. The list (which is indicative rather than binding) is patterned after a list of factors which the United States Trade Act requires the International Trade Commission to consider in examining requests for import relief.

Chapter 2—Conditions.—This Chapter sets forth a set of conditions to which individual safeguard measures would have to conform. The conditions are (a) that the measure cover only the product or products causing the injury (b) that the measure be applied for a limited period of time (c) that once a measure is removed it should not be reapplied before the lapse of time period (d) that a measure should, to the

extent feasible, be progressively liberalized during the period of its application and (e) that the measure should not reduce imports below the level of a previous representative period. These provisions are modeled on similar provisions in the United States Trade Act.

Chapter 3.—Response to Safeguard Measures.—As mentioned above, when a country takes safeguard action pursuant to Article XIX, it is obliged to consult with countries affected by its action in an effort to reach agreement. If agreement cannot be reached, the affected countries may retaliate by suspending tariff concessions or other GATT obligations to the trade of the country taking safeguard action. This threat of discriminatory retaliation, which evidently caused many countries to avoid Article XIX and to make use of other GATT provisions or take action outside GATT entirely, is removed in the draft Safeguards Code provided that countries adhere to the new safeguard rules.

Chapter 4—Nature of Safeguard Action.—This is the most controversial part of the safeguards code. The present Article XIX requires a country taking safeguard action to restrict imports of the product concerned from all sources—that is, to take action on a most-favored-nation (MFN) basis. Some countries want the MFN requirement retained. Others insist that a country should have the right to restrict imports from the source (or a few sources) if it can be shown that imports from that source (or those sources) are the cause of serious injury.

The specific conditions on selective action and the role of the surveillance body is still unsettled in the code.

Chapter 4 bis—Use of Export Restraints.—One of the ways in which countries protect domestic producers from injurious import competition without making use of Article XIX is by inducing the exporting country to curtail its exports of the product concerned. Another way is arranging for the formation of an international cartel. This issue is closely related to the selectivity issue. The extent to which such arrangements participated in or encouraged by governments are covered by the conditions and criteria of the code for other safeguard actions has not yet been determined. Language on this issue is still under discussion and has not been included in the latest formal document.

Chapter 5—Notification, Consultation.—This Chapter establishes improved procedures (with time limits where appropriate) for notification of, and consultations on, individual safeguard actions. The present Article XIX does not provide for consultations when a safeguard action causes problems for third countries through trade diversion. When one major market is closed to imports of a product, trade sometimes shifts rapidly causing disruption in third markets. These third countries can take safeguard action themselves if serious injury is present or threatened. But a preferable solution would be to moderate the action of the first country imposing restrictions in order to avoid this kind of chain reaction. Paragraph 2 of Chapter 5 therefore contains a phrase (in brackets) permitting consultations when a safeguard action is likely to affect a third country's "trade interests." The issue is also addressed less directly under a formulation in Chapter 6 paragraph 6. Chapter 3 contains alternative provisions for Emergency action under Article XIX:2. Other provisions relate to notification

on possible extensions of action and a proposed provision containing guidelines for consultations.

Chapter 6—Surveillance, Dispute Settlement.—This Chapter establishes a Committee on Safeguard Measures, composed of representatives of all signatories of the agreement, which would have surveillance and dispute settlement functions. The Committee would meet at least once a year and would, among other things, review all safeguard measures in force. The Committee would also meet on request to consider any problem in an individual safeguard case which could not be resolved through bilateral consultations.

Chapter 7—Domestic Procedures.—Very few countries have formal, public domestic procedures such as those set forth in the United States Trade Act for examining requests for safeguard action. The Code will encourage other countries to improve their domestic procedures to provide more openness and due process and to provide information on individual safeguard actions for multilateral consideration. One means of doing this would be for each code signatory to establish an officially designated government entity to review requests for safeguard action; to permit all interested parties to present their views on individual requests; and to publish a report available to all parties of each decision which would include factors considered, criteria applied, and the rationale use in arriving at conclusions.

Chapter 8—Developing Countries.—This chapter is now under discussion and may include a provision that may provide special benefits for developing countries. Signatories would agree to make an effort to avoid safeguard actions on products of special interest to developing countries and, if action is taken, to limit, if feasible, its extent and duration. When safeguard actions are taken, signatories might permit imports from developing countries which are small suppliers or new market-entrants to continue to have market access with moderate growth on favorable terms. Developed signatories, however, are reserving the right to withdraw this favorable treatment from individual developing countries when such countries, or relevant sectors within those countries, achieve higher levels of development or become competitive. It is likely that provisions containing some or all of these elements will be included in a final package.

Chapter 9—Other Provisions.—Under this Chapter, signatories would agree to terminate, within a specified period of years after entry into force of the new code, all of their existing safeguard actions taken pursuant to GATT Article XIX unless such actions were extended pursuant to the new code. Moreover, signatories would agree to notify all other safeguard measures they apply when the new code enters into force and to terminate such measures within one year unless they are in conformity with the code. The purpose of these provisions is to bring all safeguard measures currently applied by code signatories—even those measures that have been taken outside the GATT—within the discipline of the new system. Differences of view over the extent of the committment on existing QR's are reflected in brackets.

Technical Barriers to Trade (Standards)

I. EXECUTIVE SUMMARY

Product standards, ranging from permissible auto exhaust emission levels to wine-labelling requirements, can be manipulated to discriminate against imports. Imports may be tested, to determine whether they conform with standards, under conditions more onerous than those applicable to domestic products. Certification systems, for indicating that products conform to standards may be closed to imports or may discriminate in other ways. Each of these devices has been used in the recent past to exclude U.S. exports from foreign markets.

The purpose of the draft Code of Conduct for Preventing Technical Barriers to Trade (known as the "Standards Code") is to discourage discriminatory manipulations of product standards, product testing, and product certification systems. The Code also would encourage the use of open procedures in the adoption of standards, such as those widely used already by the United States under the Administrative Procedure Act, and would encourage international standardization.

The Standards Code would establish international procedures by which signatories may complain of Code violations by other signatories, may secure reviews of their complaints, and may, if a valid complaint remains unsettled, ultimately take some type of retaliatory action. U.S. ligislation to implement the Standards Code is expected to develop these international rights by allowing U.S. exporters to complain and secure reviews of foreign standards practices that reduce their export opportunities. The implementing legislation also will provide the occasion for a full-scale review of federal assistance and involvement in the area of standards-making and enforcement.

The possibility of creating a channel for U.S. exporters to secure reviews of *U.S.* standards that inhibit export opportunities, as well as the likelihood that U.S. importers, wholesalers, retailers, or consumers will be permitted to complain of U.S. standards practices that limit their access to imports, also could be considered as possible components of the U.S. implementation of the Standards Code. It is anticipated that the Standards Code would apply to most agricultural standards. The Standards Code requires signatories to use "all reasonable means within their power" to see that their States (or provinces, landers, etc.), local governments and private sector bodies comply with the Code. Noncompliance by such a non-federal entity may be the subject of a complaint under the Code's dispute-settlement procedures.

II. STATUS OF NEGOTIATIONS

The Code of Conduct for Preventing Technical Barriers to Trade (Standards Code) is designed to reduce trade obstacles that result from the preparation, adoption, and application of product standards and certification systems. Thus, the code contains specific obligations and procedures to ensure that standards and certification systems are not used as barriers to trade. The Code is not, however, intended

to interfere with the right of countries to adopt appropriate standards to protect the health, safety, or environment of their citizens.

Standards (both voluntary and mandatory) and certification systems, promulgated by: (1) central governments, (2) state and local governments, and (3) private sector organizations, are subject to the code's provisions although only cental governments are bound by the Code. The Code also applies to product standards of a voluntary nature. Standards prepared by a government body or private company for its own production or consumption are not subjected to the Code's provisions, but are addressed in the Government Procurement Code.

The Code's provisions would apply to new and revised standards and certification systems. Consequently, implementation of the Code will not involve any change to existing standards or certification systems. Nonetheless, if a signatory believes that an existing measure conflicts with the Code's obligations, it may raise the matter in the Committee of Signatories and use the dispute settlement mechanism to seek a mutually satisfactory solution.

A fundamental obligation of the Code is that signatories not allow standards and certification systems to be prepared, adopted or applied so as to create unnecessary obstacles to international trade. The existence of any national standard or certification system is bound to create some degree of a commercial effect, but many such measures are adopted for legitimate domestic reasons and are clearly justified to achieve the desired objective, such as the protection of public health. Nonetheless, these measures can be manipulated so as to constitute a disguised trade barrier, creating obstacles to commerce that are not necessary to achieve the objective of the standard or certification system. It is these practices that would be subject to the Code's discipline.

Another principal code obligation is that national and regional certification systems grant access (i.e., permit goods to be certified under the rules of the system) to foreign or non-member suppliers on the same basis as access is granted to domestic or member suppliers. Denial of such access has been and is potentially a major problem for U.S. exporters. Where certification systems are in effect, they are required to be non-discriminatory and applied on a most-favored-nation basis. Signatories are encouraged to accept certification in the country of export when they are satisfied that such certification is performed by a technically competent body. In addition, with respect to regional certification systems signatories undertake to use all reasonable means within their power to ensure that non-members of the regional system have access to such systems.

There are two types of obligations for signatory countries:

1. First level of obligation—signatories would be responsible for central government bodies complying with the code's provisions. This is accomplished by language which requires that signatories "shall ensure that" central government bodies comply with the provisions of the code. For purposes of the code, the European Economic Community is subject to the same obligations as a central government body.

2. Second level of obligation—with respect to regional, state, local and private organizations, the code would require signatories to use "all reasonable means within their power" to ensure compliance with the code. Such "reasonable means" are up to each individual signatory

to determine within the context of its domestic political and legal system. If a country believes another signatory has violated an obligation of the code and has adversely affected international trade, it can raise the matter under the code's dispute settlement mechanism to seek a mutually satisfactory solution.

The code encourages the use of appropriate existing international standards when a new or revised domestic standard or technical regulation is being drafted. Whenever the use of an existing international standard is not appropriate, or when no international standard exists, open procedures must be followed during formulation of standards and certification systems. These procedures include those already undertaken in most U.S. standards-making activities, such as publishing proposed measures, affording an opportunity to make comments, and taking such comments into account.

All standards and rules of certification systems must be published. In order to ensure transparency of national standards activities and facilitate information flow, all signatories are required to establish a centralized data base containing information on specific standards and procedures, as is presently maintained, to a large extent, by the United States. Adherents to the code would have access to this data base.

Upon a specific request, code signatories are to provide technical assistance in the standards field to developing countries on mutually agreed terms and conditions. Such assistance will aid the development of competent standards methods and organizations.

As in all other areas of the code, code signatories are responsible for actions within their jurisdiction which conflict with the code's provisions. Should a matter need to be raised regarding the code's implementation in a signatory country, dispute settlement procedures are specified. The dispute settlement provisions provide a number of modes and opportunities of adherents to resolve contentious issues. In the first instance, there is an obligation to engage in bilateral consultations at the request of any adherent. If such consulatations do not result in a resolution of the dispute, it can be put before the Committee of Signatories, and then subject to analysis by a technical working group and/or to review by a panel of experts. Any action to be taken as a result of a particular dispute will be reviewed by the full Committee. Any authorization for retaliatory actions is limited to the withdrawal of benefits contained in the Standards Code.

Licensing

I. EXECUTIVE SUMMARY

Products traded internationally are sometimes subject to needless bureaucratic delays as a result of cumbersome import licensing systems. Often procedures and documentation necessary to obtain such licenses are complicated. The red tape involved in obtaining licenses frequently means that products are not cleared through customs. This problem is praticularly acute in developing countries. The basic purpose of the code of conduct for import licensing procedures that is under consideration in the MTN is to reduce these unnecessary administrative impediments to trade.

The draft code deals with the administration of import licensing procedures, rather than with the existence or extent of quantitative

import restrictions. Its purpose is to simplify and harmonize to the greatest extent possible the procedures which importers must follow in obtaining an import license, so that these procedures do not themselves constitute an unnecessary obstacle to international trade.

In the negotiations on the licensing code, the U.S. negotiators have pressed for the most stringent language negotiable regarding the use of automatic import licensing systems. In addition, the U.S. negotiators have stressed the need for provisions of interest to the developing countries, especially regarding market shares for new suppliers in quota administration. The draft code is described more fully in Part II, and an overview of implementation is given in Part III.

II. STATUS OF NEGOTIATIONS

The section on general provisions states that the provisions of the code, together with the relevant provisions of the GATT, shall operate to prevent trade distortions that may arise from inappropriate operation of licensing procedures. In order to bring this about, provisions are included that provide for the publication of the rules governing procedures for submission of applications for import licenses, as well as other useful information about licensing systems, and which would simplify application and renewal procedures for obtaining a license. In this regard, the code specifies that importers would have to go to only one adminstrative body in order to apply for a license. A "reasonable" time period is to be allowed for applying for a license, and no application is to be refused for minor documentation errors.

The general provisions also state that licenses are not to be refused for minor variations in value, quantity, or weight of the product under license. It is also specified that the necessary foreign exchange to pay for imports is to be made available for imports subject to licensing on the same basis as it is for goods not subject to licensing. Finally, this section of the code includes a provision that encourages the settling of dispute through consultations, while also specifying that matters may be brought before the "Contracting Parties".

The section on automatic import licensing (defined as those under which licenses are granted freely) specifies that automatic import licensing systems should only be maintained as long as the circumstances which gave rise to their introduction prevail, or as long as their underlying administrative purposes cannot be achieved in a more appropriate way. The code states that licenses required under this kind of system are to be made available to anyone fulfilling prescribed criteria, and that they are to be granted immediately upon request, to the extent administratively feasible, but in any case within 10 working days.

The section on non-automatic import licensing systems (those under which licenses are not granted automatically, including licenses required for the administration of quotas and other import restrictions) specifies that governments are to provide information concerning the number and value of licenses granted, to publish information on the administration of quotas, and to permit any person, firm or institution to apply for a license.

The provisions on non-automatic import licenses also state that the period for processing a license should be as short as possible and that the duration of a license not be short as to preclude importation from

taking place. In granting licenses governments may take into account whether previously issued licenses have been utilized. In addition, governments shall not prevent importation from being affected in accordance with the issued licenses.

If possible, licenses are to be issued to new importers; however, where licenses are required to administer quotas not specifically allocated to supplying countries, license holders are free to choose the source of imports. Finally the section on non-automatic import licenses provides that where an importing country requires import licenses to administer an export restraint arrangement between an exporting and an importing country, such licenses shall be granted freely, i.e., automatically, within the restraint levels in question.

Customs Valuation

I. EXECUTIVE SUMMARY

The purpose of customs valuation is to establish the value of imported goods for the assessment of customs duties, which are generally levied on an *ad valorem* basis. The method of valuation which a country applies can be as important as the tariff rate itself in determining the actual amount of duty charged. As a result, depending on the structure and administration of a given system, customs valuation can restrict trade.

The current U.S. customs valuation system has nine different methods of determining customs value, including the controversial American Selling Price (ASP). The use of each method depends on the product being valued as well as the circumstances under which the product is imported. The U.S. customs valuation system has long been criticized by many of our trading partners as being a major U.S. nontariff barrier to trade. For this reason, a major objective of these countries in the multilateral trade negotiations has been to obtain changes in the U.S. customs valuation system.

While the current U.S. customs valuation system has long been criticized, the customs valuation systems of our trading partners also have controversial and protective features. A major U.S. objective in the negotiations has been to eliminate these arbitrary and protective features from foreign customs valuation systems.

It is against this background that a new set of international rules for customs valuation has been developed in the multilateral trade negotiations. An attempt has been made to ensure that these new rules are fair and simple, that they conform to commercial reality, and that they will allow traders to predict with a reasonable degree of accuracy the duty that will be assessed on their products. It is interesting to note that there are strong similarities between the proposed new international rules and Section 402 of the Tariff Act of 1930, which governs the valuation of many U.S. imports.

A description of the customs valuation agreement is set out in Part II.

II. DESCRIPTION OF AGREEMENT

The Customs Valuation Agreement sets out five methods—one primary method and four secondary methods—of determining customs value. These five methods are arranged in hierarchical fashion, that is,

an order of precedence governs the application of each of the methods. The first, or primary, method is to be used in all cases unless a valid customs value cannot be found using this method. In such cases, the second method is to be used. If a valid customs value cannot be found using the second method, the third method is to be used, and so on.

The first, or primary, method specifies that customs value shall be the transaction value of the imported goods. The transaction value is the price actually paid or payable for the goods with additions for certain costs, charges, and expenses incurred with respect to the imported goods that are not included in the price actually paid or payable. These additions cover such items as selling commissions, brokerage fees, container costs, packing costs, royalties and license fees, and assists. Assists are assets that the buyer furnishes, either directly or indirectly, to the seller of the goods at no cost or at reduced cost, which thereby reduces the price at which the seller can sell the goods to the buyer. The Agreement specifies that the only assists for which additions can be made to the price are tangible assists (e.g. materials, components, dies, tools, etc.) and engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation. Other intangible assists are not dutiable and their use will not result in rejection of the transaction value.

The Agreement specifies four sets of conditions for which the transaction value of the imported goods may be rejected as the customs value. These include: 1) where the seller places restrictions on the buyer as to the use or disposition of the goods; 2) where the sale or price of the goods is contingent on some factor for which a value cannot be determined; 3) where the seller, in partial payment for his goods receives some percentage of the proceeds from the resale of the goods by the importer and the transaction value cannot be adjusted to reflect this amount; and 4) where the buyer and seller are related and their relationship influences the price of the imported goods.

If the primary method—that is, the transaction value of the imported goods—cannot be used to establish a valid customs value, the second method shall be used. Under this method, the customs value is found using the transaction value of identical goods for export to the same country of importation at or about the same time as the sale of the imported goods. If the sale of identical goods is at a different commercial level or in different quantities that the sale of the imported goods, adjustments are to be made to reflect these differences if such adjustments can be made on the basis of demonstrated evidence.

If the primary and the second method cannot be used to establish a valid customs value, the third method shall be used. Under this method, the customs value is found using the transaction value of similar goods for export to the same country of importation at or about the same time as the sale of the imported goods. If the sale of similar goods is at a different commercial level or in different quantities than the sale of the imported goods, adjustments are to be made to reflect these differences if such adjustment can be made on the basis of demonstrated evidence.

If the primary, the second, and the third methods cannot be used to establish a valid customs value, the importer shall have the option of having the customs value established under either the fourth or the fifth methods. If the importer does not exercise this option, the normal order of the hierarchy will prevail. Where the importer does exercise

his option but it then proves impossible to determine the customs value on the basis of the fifth method, an attempt should be made to determine a customs value using the fourth method.

The fourth method bases customs value on the unit price at which the imported, or identical or similar imported goods are resold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, in the country of importation and in the same condition as imported to unrelated buyers. From this price deductions are made for profit, general expenses, the costs of transport and insurance incurred in the importing country, and certain other costs, charges, and expenses associated with the resale of the goods. Thus, this basis of value, known as "deductive value", starts with the resale price of the imported goods and subtracts from it all the elements of value that have been added to the goods after they have been imported through the time they are resold. In order to make this method a useful one, the method allows the customs value to be based not only on the resale price less deductions of the imported goods themselves but also, where appropriate, on the resale price less deductions of identical or similar imported goods. The application of the method is limited to goods that have not been further processed, except that the importer may elect, if he so desires, to have this method applied to goods that are further processed after importation but before they are resold to buyers that are unrelated to the importer.

The fifth method bases customs value on a computed value, which consists of material and manufacturing costs, profit, and general expenses. This method, similar to the constructed value method in current U.S. customs valuation statutes, relies heavily on the cooperation of the producer of the imported goods in supplying the information necessary to compute a value. In most instances, unless the producer supplies such information, it will be impossible to compute a value for the imported goods. On the other hand, given the structure and content of the rules governing the determination of customs value, as a practical matter, the "computed value" method of valuation will only be applied where an importer desires it to be applied and deals in good faith with the customs administration.

If the customs value of imported goods cannot be determined under any of the five previously described methods, the value shall be determined using reasonable means consistent with the principles and general provisions of the code and Article VII of the GATT. The Agreement sets forth a list of methods which cannot be used in this context while an interpretative note provides guidance as to how a customs value should be determined in these instances. The international set of rules in this regard is similar to Section 500 of the Tariff Act of 1930, which currently governs U.S. customs valuation practices in these situations.

The Agreement provides that parties to the Agreement may apply its provisions on either an F.O.B. or a C.I.F. basis.

There are a number of technical provisions in the Agreement. These provisions cover such areas as currency conversion, rapid clearance of goods, domestic appeal rights, and publication of laws and regulations affecting customs valuation.

The Agreement is to be administered at the political level by the GATT and at the technical level by the Customs Cooperation Council. A dispute settlement procedure is provided for.

The Agreement sets forth special and differential treatment for developing countries in three ways—through a 3-year delayed implementation of the Agreement, through a 5-year derogation for computed value, and through technical assistance.

The Agreement is to enter into force on January 1, 1981. Other final provisions to the Agreement cover such areas as accession, withdrawal, amendments, and reservations.

The Agreement contains a number of interpretative notes that form an integral part of the Agreement. Several more interpretative notes to the Agreement are in preparation and are to be completed before the Agreement is formally signed.

Commercial Counterfeiting

I. EXECUTIVE SUMMARY

Although commercial counterfeiting negotiations are at an early stage, the international response to the U.S. initiative has raised hope that agreement can be reached early in 1979. The United States seeks an international agreement that would protect against trademark and tradename piracy by requiring the forfeiture of counterfeit merchandise. This sanction is provided for in Section 211 of the Customs Procedural Reform and Simplification Act of 1978, and may, therefore, require little or no domestic implementation. However, the coverage of the Agreement is still subject to negotiation and may be expanded in a limited way if necessary to gain wider acceptance of the Agreement. The Agreement we seek would also contain procedural safeguards that would prevent the application of forfeiture sanction from becoming a nontariff barrier to legitimate trade. In addition the agreement would also provide for international surveillance and dispute settlement.

Negotiations based upon a United States proposal are now underway in Geneva. The following pages describe the negotiations in more detail, point out the outstanding issues, discuss implementation, and attach the U.S. proposal for an agreement.

II. STATUS OF NEGOTIATIONS

The main element of the Agreement will be the required sanction of forfeiture. Substantive matters such as for example, what trademarks are entitled to protection, are left to national law. While the U.S. proposal deals with trademarks and tradenames only, a number of suggestions have been made to expand the coverage of the agreement.

A significant number of countries favor the inclusion of designs and models. A number of U.S. companies now favor the inclusion of copyrights. These matters will be the subject of further negotiations.

The U.S. goal is to secure an Agreement that would establish a more effective discipline on international trade in counterfeit merchandise. To that end, we seek acceptance of the basic principle that the parties to a counterfeit transaction should be deprived of the economic benefits of the transaction. Thus, our proposal would require forfeiture. One country favors retaining its present authority to permit the reexportation of counterfeit merchandise. Negotiations will continue on this point to gain the widest possible acceptance of required forfeiture.

We also hope to require minimal procedural safeguards so as to prevent the application of the agreement from becoming a nontariff barrier to legitimate trade. Of course we recognize that countries now have wide latitude in dealing with counterfeit merchandise. However, we would seek to impose general requirements for fair, open, and expeditious determinations that would be subject to appeal. In addition we would have new rights to consultation and dispute settlement that would not only serve to protect legitimate exports, but would encourage the effective implementation of the Agreement.

III. OUTSTANDING ISSUES

Agreement has not been reached on any issues at this date; however, a number of countries are sympathetic to our goals. The major issues for resolution concern:

1. The coverage of the Agreement, that is, whether the definition of "commercial counterfeiting" should be limited to trademarks and tradenames, or expanded to include other areas such as designs, models, and copyrights.
2. The procedural safeguards to be required.
3. International surveillance and dispute settlement procedures within the Agreement.
4. The sanction to be imposed.

AIRCRAFT AGREEMENT

I. EXECUTIVE SUMMARY

Prospects for an agreement on trade in civil aircraft are encouraging despite late introduction of this issue into the MTN. Based on a U.S. proposal, the agreement would eliminate tariffs and establish meaningful reductions in nontariff barriers between the United States and its major trading partners. Since the Bonn Summit, when serious negotiations on aircraft issues began, the U.S. has been working toward agreement on the major issues of tariffs, government-directed procurement and offsets, subsidies, quantitative restrictions, and standards with Japan, Canada, the EC, and Sweden. Negotiations will be continued in January in order to complete the text of the agreement. Recognizing that efficient production in aircraft, engines, and parts depends on a world-wide market, U.S. industry has strongly supported the U.S. objectives.

The U.S. seeks to establish an open market for trade in a broad range of aircraft products. Although details of coverage remain to be worked out, the agreement would eliminate tariffs on civil aircraft, engines, subassemblies, and fabricated components designated for use in aircraft. Although many foreign tariffs on these products are currently waived, the firm intentions of the EC, Canada, and Japan to build national aerospace industries of their own, make the binding of zero tariffs within the GATT necessary in order to discourage the use of protective tariffs in the future.

In return for elimination of the current U.S. duty of five percent on aircraft, the U.S. seeks provisions reducing nontariff barriers which go beyond the general agreements negotiated in the MTN.

The agreement would also provide for regular international review, some method of dispute settlement and withdrawal. Subject to Congressional review, the agreement would take effect in January, 1980.

Attached is a summary of the significant issues and the status of the negotiations.

Attachment.

II. PROVISIONS OF THE AGREEMENT

Although U.S. industry presently dominates the world market for trade in civil aircraft and parts, its market share has recently been declining, due in part to the network of nontariff barriers erected by other industrial nations and the appearance of significant new competitors on world markets. Thus in addition to elimination of tariffs, the U.S. is seeking strong commitments from signatories of the agreement to limit those actions in the following areas:

A. Standards
B. Government-directed procurement
C. Offsets
D. Quantitative Restrictions
E. Financing
F. Inducements (government incentives in connection with aircraft transactions)

In addition, the agreement will establish an international forum for regular review of the articles of the agreement and provide for withdrawal.

III. STATUS OF THE NEGOTIATIONS

Since July, negotiations on the agreement have progressed significantly, considering the given time frame of the MTN. A single working text on all issues has been drafted. January sessions are scheduled to conclude negotiations on the basis of this text.

Although we are close to agreement on the remaining issues, details on government procurement (including offsets), subsidies, inducements, product coverage, and review remain to be worked out.

Framework (GATT Reform)

I. EXECUTIVE SUMMARY

The United States has had a long-standing interest in improving the rules governing international trade, and strongly supported inclusion of this objective in the Tokyo Declaration. The Trade Act directs the President to take certain steps toward the revision of GATT, "in conformity with principles promoting the development of an open, non-discriminatory and fair world economic system."

In the early stages of negotiations, the United States sought its reform objectives through work in various MTN functional groups. In November 1976, following extensive consultations on a proposal made by Brazil, the Framework Group became the last of the MTN negotiating groups to be established. A work program was developed covering the following five issues:

A. The legal framework for differential and more favorable treatment for LDCs under the trading system (enabling clause);

B. Safeguard action for balance of payments (BOP) and developmental purposes;

C. Consultation, dispute settlement and surveillance procedures under the GATT;

D. For purposes of future negotiations, the applicability of the principle of reciprocity in trade between developed and developing countries and fuller participation, with respect to both rights and obligations, of the LDCs in the trading system (reciprocity/graduation);

E. GATT rules governing the use of trade restrictions affecting exports.

The United States had specific interests in negotiations on three of the issues in the work program (BOP, dispute settlement and export restrictions). We also had an important interest in ensuring that the end results of the negotiations on the LDC issues provide a basis for a sensible and balanced approach to the LDCs under the GATT.

A. Enabling clause/reciprocity/graduation

The first and fourth topics of the framework agenda have been linked in the Framework negotiations. The LDCs, led by Brazil, have sought a firmer legal basis for the Generalized System of Preferences (GSP) and other types of "special and differential" treatment through negotiation of a general "enabling clause" to be inserted in the General Agreement. In addition, they have sought recognition by developed countries that LDCs cannot be expected to make fully reciprocal concessions in future trade negotiations.

In the MTN, the U.S. and other developed countries were willing to negotiate on the subject, but conditioned support for the "enabling clause" on a commitment by developing countries to assume fuller GATT obligations in line with their development progress and recognition that benefits of special treatment would be phased out as that economic progress is made. Certain conditions are attached to this clause limiting the types of special arrangements that are covered.

B. Safeguard action for balance of payments and developmental purposes

1. Safeguards for balance of payments purposes.—U.S. has sought more effective GATT rules and procedures governing the use and review of trade measures for balance of payments purposes. The agreement that has been negotiated contains a recognition that restriction of imports is generally an inappropriate means to maintain or restore balance-of-payments equilibrium and that when such action is taken it should be done in a manner so as to limit the trade-distorting effect as much as possible. The agreement also provides review procedures designed to apply to all trade actions taken for balance-of-payments purposes and includes provisions designed to make the review process more effective.

2. Use of safeguard measures by developing countries for development purposes.—Article XVIII of the GATT provides that developing countries may restrict their imports in order to promote economic development, particularly to establish a certain industry. Because of its complexity and stringency compared to other avilable measures, Article XVIII was little used. The agreement that has been negotiated broadens the provisions in Article XVIII. However, notification and

payment of adequate compensation continue to be required for LDCs that invoke the provisions of the agreement.

C. Consultation, Dispute Settlement and Surveillance Procedures Under the GATT

Section 121 of the Trade Act states as a negotiating objective,

> "Any revision necessary to establish procedures for regular consultation among countries and instrumentalities with respect to international trade, and procedures to adjudicate commercial disputes among such countries and instrumentalities."

The framework negotiations have produced a text which will seek to ensure an effective and objective process for resolving all GATT-related disputes. The agreement includes (1) recognition of traditional GATT practice under which Contracting Parties have been accorded the right to have a dispute reviewed by an impartial panel; (2) provisions (target time limits, panel selection, etc.) to prevent abuses of the panel process; and (3) a reaffirmation by contracting parties of their obligation to notify trade measures that they implement as a basis for improved consultative and surveillance framework after the MTN.

D. Use of Trade Restrictions Affecting Exports

Negotiations of an agreement on the use of export controls have aimed at achieving a greater practical comparability between the degree of discipline applied to export controls and that applied to import controls. In the text that has been negotiated, contracting parties have recognized that existing rules in the General Agreement should be assessed on a priority basis following the close of the MTN in the context of the existing international trading system. The provisions of the dispute settlement agreement, (notification, consultation, etc.) further strengthen the existing rules and procedures in the GATT. All provisions are written in terms of "trade" measures rather than "import" measures with the implicit understanding that export as well as import restraints are covered by the agreement.

II. DESCRIPTIONS OF THE AGREEMENTS

A. Enabling Clause/Reciprocity/Graduation

Enabling Clause.—The so-called enabling clause, which combines the first and fourth agenda items of the Framework Group work program, provides a legal basis by which developed countries may extend differential and more favorable treatment to developing countries on a non-MFN basis. The agreement does not obligate developed countries to extend this treatment. The types of special arrangements that are covered by the agreement are limited to include (1) the Generalized System of Preferences; (2) differential treatment with respect to provisions of the General Agreement concerning non-tariff measures; (3) regional or global arrangements entered into among less-developed contracting parties; and (4) special treatment of the least developed countries. It is explicitly stated that special treatment should be provided so as to respond to countries' development needs and not to adversely affect trade flows. It is also stated that special measures should be modified as development needs of the less developed countries change.

Reciprocity.—In conjunction with the fourth agenda topic of the work program, the agreement contains recognition by developed countries that they do not expect full reciprocity (that is contributions inconsistent with development needs) from LDCs for commitments made to LDCs by developed countries in future trade negotiations.

Graduation.—The sixth paragraph of the agreement contains graduation provisions whereby developing countries would accept greater obligations under the GATT as their economic situations improve.

B. Trade Measures Taken for Balance of Payments Purposes

Preamble.—The preamble of this agreement contains a number of important points, including (1) recognition that trade measures are generally inefficient means of dealing with balance of payments problems, (2) recognition that price measures such as surcharges have been used for balance of payments purposes, (3) reaffirmation that such measures should not be used in order to protect a particular industry or sector, and (4) recognition that developed countries should avoid the use of trade measures for balance of payments purposes.

Use of Surcharges and Other "Price" Measures.—In the agreement signatories have pledged when taking restrictive import measures to give preference to measures which have the least disruptive effects on trade.

Notification, Consultation.—The agreement contains explicit mention of the obligation of contracting parties to notify their use of import measures taken for balance of payments purposes. Furthermore, all measures will be subject to consultation. Simplified consultation procedures for regular consultations with developing countries will be admissible, although a less-developed contracting party may request full consultations at any time.

C. Safeguard Action for Development Purposes

This agreement broadens the provisions in Article XVIII of the GATT which provides that developing countries may restrict their imports in order to promote economic development. The agreement recognizes that the use of such safeguard measures to promote development of new or modification or extension of existing production structures may be necessary for less developed countries to achieve their economic development goals. Furthermore, the agreement gives developing countries the right to take such measures on an immediate but provisional basis in emergency situations following notification of the action.

Although provisions of Article XVIII have been broadened by the agreement, there is also explicit recognition that in taking such actions, developing countries should give due regard to the objectives of the General Agreement and avoid the unnecessary disruption of trade. Furthermore, all other requirements of Article XVIII such as notification and payment of adequate compensation will remain unchanged.

D. Dispute Settlement

The dispute settlement text seeks to ensure an effective and objective process for resolving all GATT-related disputes.

Notification.—Contracting Parties have reaffirmed their commitment to existing obligations under the General Agreement regarding publication and notification. Furthermore, they have agreed to endeavor to notify imposition of trade measures in advance of implementation wherever possible and immediately after implementation when advance notification was impossible.

Consultations.—In the agreement, contracting parties have agreed to respond to requests for consultations from other parties and to attempt to conclude consultations expeditiously.

Right to a Panel.—If establishment of a panel is requested, the request shall be granted "in accordance with standing practice" according to the agreement. The Annex states than since 1952, the usual procedure has been establishment of panels to examine questions raised under Article XXIII:2, and, in fact, a panel request has never been denied.

Composition of a Panel.—The agreement states that a panel shall consist of three or five members "depending on the case." Parties to the dispute have agreed not to oppose nominations, "except for compelling reasons."

Time Limits.—Several time limits are contained in the agreement. Parties to a dispute are to respond to nominations of panel members within seven days. The Annex states that in most cases, panels should conclude proceedings within three to nine months.

Panel Findings.—Panels should submit their findings in a written form, although in cases where a settlement has been reached, remarks may be confined to a brief description of the case and to reporting that a solution has been found.

E. UNDERSTANDING REGARDING EXPORT CONTROL MEASURES

Contracting parties have recognized in the agreement on export controls that existing rules in the General Agreement which apply to both export and import restraints should be assessed on a priority basis in the context of the existing international trading system in the post-MTN period. The provisions of the dispute settlement agreement (notification, consultation, etc.) further strengthen the existing rules and procedures in the GATT relating to the use of export restraints.

Other Tariff Matters

Revised Watch Nomenclature.—As part of the negotiation of tariff concessions on watches and parts, the United States has presented its tariff offer in terms of simplified and modernized nomenclature. This new nomenclature greatly reduces the complexity of the watch rates and reflects the changing technology in the watch industry resulting from the introduction of electronic timepieces. In addition to the new nomenclature, approval is also needed to change the Column 2 rates to conform to the new classification.

Conforming Column 2 Changes for Rate Conversions.—For all cases where the United States is converting the form of the tariff from specific and compound rates to *ad valorem* rates, approval is needed to make conforming changes in the rates in Column 2. Rate conversions are being made at the request of our private sector advisors to prevent erosion of tariff protection through inflation. It is appropriate therefore to make commensurate changes in Column 2 rates to maintain

their current relationship to Column 1 rates. Rate conversions are being made on ceramic dinnerware, certain products subject to ASP valuation, and numerous other products.

End-Use Classification for Agricultural Machinery and Parts.—As part of our negotiations with Canada, we expect to agree to establish an end-use provision in the tariff schedules to permit duty-free entry of certain products for use on farms. Authority is needed for both the new tariff lines and for reduction of the rates to zero.

Agricultural Trade Matters

WHEAT TRADE CONVENTION

Executive Summary.—A new Wheat Trade Convention (WTC) to replace one due to expire in June 1979, remains under negotiation under UNCTAD auspices. Although a final version of a new WTC has not been produced, a consensus has been achieved on the operative economic elements of the Convention. Tentative agreement has been reached on other major issues, although some issues remain unresolved.

A major objective of this Convention is to avoid the extreme price fluctuations experienced in recent years in world wheat markets. This objective would be achieved through an equitable sharing of responsibility for reserve stocks and other adjustments to changing world market conditions.

The proposed WTC currently includes a system of nationally held reserves that would be accumulated when prices are low and released when prices are high. An indicator price mechanism would trigger reserve stock action and other measures.

The WTC draft text also includes lower and upper "critical market situation" price levels. These define a price band within which prices presumably will remain as a result of cooperative action by members. There are no obligations associated with these price levels.

There remains a number of very difficult issues to resolve before final agreement can be reached. These include:

The size of the total reserve and the individual country shares;

The level of the price indicator points to trigger reserve stock and other actions; and

Special provisions for developing countries.

Another conference is scheduled for January 22 to February 9. The U.S. and the EC worked out some of their major differences during a recent bilateral. Thus the chances of concluding an agreement at the upcoming meeting have been improved.

Status of Negotiations.—The WTC has gone through several drafts in the negotiating process. Although a final draft has not been agreed, a consensus has been achieved on the basic structure of the Convention. However, several major issues remain unresolved.

The primary operative mechanism of the current draft WTC is a system of nationally held reserves which will be accumulated and released in accordance with the international guidelines established in the WTC. In addition, the draft provides for consultations to:

Review the market situation before reserve action is taken;

Agree on a program for the obligatory accumulation or release of reserves under the provision that, if no agreement can be reached within a certain period, reserve action would be taken automatically under a pre-agreed program; and

Agree on a program of actions (which may vary from country to country) to be taken in the event reserve action fails to stabilize the market (e.g., production adjustments).

These actions would be triggered by the movement of a price indicator as outlined in the schema below.

Third rising price point.—Members meet to develop a joint program of additional, shared measures to avoid further price increases.

Second rising price point.—Release of reserves.

First rising price point.—Consultations to review market situation.

NO ACTION

First falling price point.—Consultations to review market situation.

Second falling price point.—Accumulation of reserves.

Third falling price point.—Members meet to develop a joint program of additional, shared measures to avoid further price decline.

The draft WTC text also includes lower and upper price levels. It has been agreed by several key participants in the negotiations that these prices would be benchmarks at extremely high and low levels within which prices should remain as a result of cooperative actions by members. There will be no obligations associated with these prices. Moreover, these two price points will be at levels which very likely would never be reached.

In its final form, the WTC will probably also include provisions designed to:

Limit the use of export subsidies:

Provide importers general assurances of supply availability, including a commitment to refrain from measures which restrict exports to members, except under certain extreme circumstances; and

Encourage assistance to developing countries which have reserve obligations.

OUTSTANDING ISSUES

Indicator Price Levels.—This is one of the most difficult issues to resolve. Substantial differences of view exist between the importers, who generally want lower prices, and exporters who generally want higher price levels. The two key indicator price levels are levels for reserve accumulation (the second falling price point) and the level for reserve release (the second rising price point).

Size of the Reserve.—The United States has proposed a target reserve of 30 million metric tons conditioned upon widespread participation in the reserve program including the USSR and the developing countries.

Reserve Shares.—This issue is one of the most important issues to be resolved in the Convention because it encompasses the basic obligation associated with a new arrangement. The United States and the EC have proposed significantly different allocation formulas. Governments have informally indicated their intentions. The United States has expressed its willingness to hold approximately five million metric tons conditioned on full participation by others.

Supply Assurances.—Importers are seeking the strongest possible commitment from exporters for supply assurances to meet their commercial requirements in years of short-supply. Exporters are concerned about the problems such a commitment would create for

them during a period of short-supply. They also believe that any supply assurances should be off-set by obligations on the part of importers in order to maintain a balance of rights and obligations in the Convention. An obligation to hold sizeable reserves in excess of normal working stocks would constitute such an off-setting obligation for importers. To meet some of the concerns of both the importers and exporters, the United States has proposed a provision at the third rising price point which would prohibit the use of restrictions on exports to members, except in certain extreme situations.

Limitation of Export Subsidies.—The United States has proposed a general export subsidy provision which precludes an exporter from using export subsidies to increase its share of trade in the world or national export markets. The EC has said that export subsidy issue will be dealt with in the Subsidies/CVD Code negotiations in the MTN. The Community, however, has indicated a willingness to include some form of restraint on export subsidies at the third falling price point.

Relief of Obligations.—Although there is a general agreement to include a provision on relief from the obligation to accumulate reserve stocks during a year in which a national production shortfall occurs, some countries have proposed that there be relief from the obligation to hold and release stocks. Other countries believe that such a general relief provision would undermine the creditability of the reserve stock mechanism.

Special Provision for Developing Countries.—The developing countries have indicated a desire to hold reserves in accordance with the new WTC, provided financing is guaranteed through a stock financing fund.

The developing countries have proposed the creation of a fund to be financed by direct contributions by developed members of the WTC. The fund would be designed to channel assistance in the form of interest-free loans to developing importing members, particularly the least developed. In addition, developing countries have pressed for special consideration in other provisions of the convention. For example, when reserves are released at the second rising price point, developing countries believe they should be given the first opportunity to purchase the reserves before importing developed members. In addition, they want a general exemption from adjustment measures provided for at the third rising and falling price points.

Most developed countries have rejected the concept of a fund. They argue that existing multilateral and bilateral aid institutions should be relied on to finance the acquisition and maintenance of reserves, as well as the construction of storage facilities. The developed countries have, however, conceded to providing special consideration for developing countries in certain areas of the Convention. For example, it has been agreed that developing countries should be exempted from production adjustments as might be called for at the third falling price point.

IMPLEMENTATION

As noted above, although past wheat trade conventions have been implemented as treaties in the United States, the method of implementing the new Convention will be decided only after extensive consultations. In addition, implementing legislation may be required in order to authorize the Executive Branch to acquire and release its reserve share in accordance with the provisions of the WTC.

Coarse Grains Trade Convention

EXECUTIVE SUMMARY

Negotiation of a Coarse Grains Trade Convention has reached the stage of tentative agreement. The tentative Convention is a consultative arrangement without substantive economic provisions. Its objectives are to further international cooperation in coarse grain trade, to promote the freest possible flow of trade in coarse grains, and to contribute to stability in international grain markets. It establishes a committee structure within which information will be exchanged and consultations undertaken to assist governments in their efforts to achieve these objectives.

DESCRIPTION OF PROVISIONS

This Convention establishes a Coarse Grains Committee with membership of all parties to this Convention. The Committee will meet at least twice annually, and at other times at the call of the Chairman. All conclusions of the Committee shall be reached by unanimous agreement of all members having a direct interest in the matter under consideration.

An Advisory Subcommittee on Market Conditions is established to monitor coarse grains markets and report to the GATT Secretariat prices, exports, and imports of coarse grains as well as freight rates and other pertinent factors which are important to freer trade in coarse grains. If the Advisory Subcommittee considers that a condition of market instability is imminent, it will report that situation to the Coarse Grains Committee which will meet within five working days to review the situation, decide on the degree of probable instability, and examine possible solutions to restore normal market conditions.

IMPLEMENTATION

Since the CGTC is consultative in nature, no implementing legislation will be required for the United States to meet its obligations under the Convention.

The International Dairy Products Council will serve as the focal point for information exchange and consultations. Member governments are required to provide the Council on a regular and prompt basis information on dairy production, consumption, prices, and trade. They are also required to report changes in domestic dairy policies and in measures that are likely to affect international dairy trade.

The Council will meet regularly (at least bi-annually) to evaluate the international dairy situation and outlook on the basis of the information provided by members. If the Council finds that a "serious disequilibrium" exists or is imminent, it will identify "possible solutions" or remedies for consideration by governments. The decisions of the Council pertaining to these "possible solutions" or other matters will be made by unanimous consent. If any member disagrees, no decision will be made. Furthermore, member governments are not obligated to implement "solutions" or the remedies identified by the Council to redress of a serious disequilibrium in the market.

The International Dairy Products Council will also establish management Committees to supervise the functioning of the Protocols

on milk powders, milk fat, and cheese. These Committees will, like the Council, function on a consensus procedure. The Protocols on milk powders, milk fat, and cheese will form an integral part of the overall IDA.

The Arrangement also includes provisions on safeguards, export subsidies, and health and sanitary standards. These provisions will be deleted upon the satisfactory conclusion of codes of conduct in these areas in the MTN. The Arrangement will not affect the rights and obligations of participants under GATT.

The IDA will enter into force on January 1, 1980 and will remain in force for three years and can be extended for another three years unless the Council decides otherwise.

The three Annexes to the IDA establish the economic provisions for minimum prices. The Annexes follow closely the language of the GATT Skim Milk Powder Agreement, which is a minimum price agreement established in 1970 under the GATT and of which the United States is not a member.

International Dairy Arrangement

EXECUTIVE SUMMARY

Negotiations of an International Dairy Arrangement (IDA) have essentially concluded. The Arrangement establishes an International Dairy Products Council:

(1) For the exchange of information among members on production, consumption, prices, stocks, and trade in dairy products;

(2) Under which member representatives may consult regularly to review the world dairy situation and identify remedies for serious market imbalances for consideration by their governments.

The Arrangement also establishes minimum prices for milk powders, butter, milk fat, and cheese below which commercial trade is prohibited.

Through exchange of information and consultations, the potential is increased for greater cooperation among member governments in their efforts to discipline surplus dairy production. Dairy surpluses in the past have led to actions by governments which distort international trade in dairy and other agricultural products. Such actions include the granting of export subsidies on dairy products and the encouraged use of milk powder in animal feed which displaces conventional feed ingredients like protein meal.

DESCRIPTION OF PROVISIONS

The IDA establishes a mechanism, the International Dairy Products Council, for information exchange and consultations. The economic provisions of the Arrangement, located in the Annexes of the Arrangements, set up Protocols providing for minimum prices on milk powders, milk fat and butter, and certain cheeses.

As described in the text of the Arrangement, the primary objective of the Arrangement is "to achieve the expansion and ever greater liberalization of world trade in dairy products under conditions as stable as possible." The products covered by the Arrangement include fresh or preserved, concentrated or sweetened milk and cream, butter, cheese and curd, and casein.

Protocol Regarding Certain Milk Powders.—This Protocol covers skimmed, whole and buttermilk powders. Minimum prices of $425, $725 and $425 per metric ton are set for each of the three categories of milk powders, respectively. These prices refer to three "pilot products" with specific milk fat and water content, with specific packaging characteristics, and in specific F.O.B. positions. Adjustments can be made in these minimum prices to reflect variances in milk fat content, difference in packaging costs, and modified terms of sale from those specified for the pilot products. Participants undertake not to export to commercial markets below these minimum prices with adjustments as outlined above. In addition, the minimum price levels will be reviewed annually by the management Committee for the Protocol and modified as necessary to take account of several economic factors including the world milk powder situation.

Trade in skimmed milk and buttermilk powder below the minimum prices is allowed, provided the milk powder is denatured for use exclusively in animal feed. Other derogations for commercial sales below the minimum prices can be granted by the management Committee. Non-commercial sales of milk powder, such as those for food and relief purposes, will be exempt from the minimum price provisions.

Protocol Regarding Milk Fat.—This Protocol covers anhydrous milk fat and butter. Its provisions parallel almost identically those in the Protocol on milk powders. It includes minimum prices of $1,000 per metric ton for anhydrous milk fat and $925 per metric ton for butter. Under provisions similar to those in the Protocol on milk fat, these prices refer to "pilot products" with specific characteristics and can be adjusted to reflect variances from the characteristics of the pilot products. Participants undertake not to export to commercial markets below the minimum prices with adjustments as provided for in the Protocol. In addition, the minimum prices will be reviewed annually by the management Committee for the Protocol and modified to reflect changes in a number of economic factors including the world butter situation.

The derogation provisions for sales below the minimum prices to commercial and non-commercial markets parallel those in the Protocol on milk fat, with the exception of sales for animal feed. No exemption for such sales is included in this Protocol.

Protocol Regarding Certain Cheeses.—This Protocol covers cheeses having a fat content in dry matter, by weight, equal to or more than 45 percent and a dry matter content, by weight, equal to or more than 50 percent. Its provisions parallel those of the other two Protocols.

A minimum price of $800 per metric ton is set for a "pilot product" of cheese with specific packaging characteristics in an F.O.B. or free-at-frontier position. Adjustments can be made in this minimum price to reflect variances in the packaging and terms of sale characteristics from those specified for the pilot product.

Sales below the minimum prices can be made to non-commercial or commercial markets under derogations granted by the management Committee for the Protocol. In addition, the minimum prices would not apply to exports in exceptional circumstances of small quantities of natural unprocessed cheese which is below normal quality for export due to deterioration or production failure. Exporters must notify the GATT Secretariat of their intentions in advance of making such sales.

IMPLEMENTATION

Adherence to the International Dairy Arrangement might require some changes in domestic regulations or administrative procedures concerning foreign sales of dairy products by the Commodity Credit Corporation.

Arrangement Regarding Bovine Meat

EXECUTIVE SUMMARY

Negotiations on the text of the Bovine Meat Arrangement are essentially complete.

Through the establishment of an International Meat Council, this arrangement provides a basis for information sharing, market monitoring, and regular consultations on international trade in bovine meat, offal and cattle. Through regular consultations, member countries may be assisted in shaping their policies and programs in ways that will avoid disruption of international markets. With greater stability in world meat markets, prospects for further trade expansion and liberalization would be improved. In the event that serious market disruption should be threatened during the life of the Arrangement, a procedure is established for consultations and recommendation of remedial measures. Any such recommendation would be by unanimous consent within the Council and would be implemented by countries on a voluntary basis. Any country may also bring before the Council any matter affecting the Arrangement including disputes between parties.

The Arrangement contains no economic obligations.

DESCRIPTION OF PROVISIONS

The Meat Arrangement is primarily an information/consultation mechanism with no economic provisions. The major objective is "to promote the expansion, ever greater liberalization and stability of the international meat and livestock market for the mutual benefit of both importing and exporting countries." To carry out this objective, the Arrangement establishes an International Meat Council to coordinate the exchange of information which members agree to provide in order to permit the Council to monitor the world market situation for beef. Products covered in this effort are: live bovine animals and fresh, chilled, frozen, salted in brine, dried or smoked, and otherwise prepared or preserved meat or offal of bovine animals.

The Council will meet regularly (at least semi-annually) to assess the information received from member nations. The Council will identify "possible solutions" to serious imbalances in the world beef market. Any recommendations to member governments must be by unanimous consent. In essence, consensus is possible only if all countries agree, effectively giving each member country a veto over any Council decision. Governments are not obligated to accept the Council's recommended solutions to market imbalances.

The Arrangement does not affect the rights and obligations of participants under GATT. The provisions on subsidies, safeguards, and health and sanitary standards will be deleted upon the satisfactory conclusion of negotiations for codes of conduct in these areas

in the MTN. If a participant wishes to protest another participant's practices in beef trade, it would file a formal GATT complaint and would still go through the Article XXII–XXIII dispute settlement procedures.

The Arrangement will remain in force for three years, and will be extended automatically unless the Council decided otherwise. Countries could withdraw without penalty upon sixty days notice.

LEGISLATIVE CHANGES

Adherence to the International Meat Arrangement would require no changes in U.S. statutes, regulations, or administrative procedures.

Multilateral Agricultural Framework

EXECUTIVE SUMMARY

This Framework provides a follow-up forum to the MTN within GATT where participating countries can work toward an improved level of international cooperation in their efforts to foster growth of farm incomes, stabilization of food prices, expansion of trade in agricultural products, and enhancement of world food security.

DESCRIPTION OF PROVISIONS

The Framework establishes an International Agriculture Committee Council for regular consultations and increased cooperation with respect to farm and food policies.

The Framework also provides oversight for international commodity arrangements and other arrangements negotiated in the MTN to ensure that they do not operate at cross purposes.

A key objective is to provide a framework for discussions that would permit the evolution of policies that allow for adjustments to underlying demand and supply conditions and improve the efficiency of the use of agricultural resources. It would also be designed to encourage the operation of internal farm policies in a way which does not distort patterns of international trade nor shift the burden of adjustment of market imbalances to other nations.

To facilitate consultations within the Council, member governments will provide: data on production and consumption, prices, stocks, and international trade of individual agricultural products, and information regarding domestic policy measures and other border measures affecting internationally traded agricultural commodities.

IMPLEMENTATION

No implementing legislation is required for U.S. adherence to this Framework.

○